



State of Ohio Environmental Protection Agency

## STREET ADDRESS:

Lazarus Government Center  
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Columbus, Ohio 43215

TELE: (614) 644-3020 FAX: (614) 644-3184

## MAILING ADDRESS:

P.O. Box 1049  
Columbus, OH 43216-1049

NOV 10 2004

**CERTIFIED MAIL**

Mr. William D. Hayes, Esq.  
Vorys, Sater, Seymour and Pease LLP  
Suite 2000  
Atrium Two  
221 E. Fourth Street  
Post Office Box 0236  
Cincinnati, Ohio 45201-0236

Re: Proposed Director's Final Findings and Orders for air pollution control law and rule violations by Clow Water Systems Company in Coshocton, Ohio

Dear Mr. Hayes:

My staff has informed me of the violations of Ohio Administrative Code ("OAC") Rules 3745-21-08(D), 3745-31-02 and 3745-31-13, the federal Prevention of Significant Deterioration ("PSD") regulations, and ORC § 3704.05(C), (G), and (J)(2) associated with Clow Water Systems Company, your client, and its facility located at 2266 South Sixth Street, Coshocton, Ohio. I understand that Clow Water Systems Company has submitted a PSD Permit to Install application to attempt to resolve the PSD violations and has taken some measures to minimize or eliminate the number of deviations from control equipment parameter operating restrictions and monitoring requirements.

Enclosed is a copy of the proposed Findings and Orders prepared by my staff which includes a provision for the settlement of the claims for civil penalties for the violations. I am proposing the use of Findings and Orders because this is the most expeditious means of resolving the violations. Because this letter and the attached documents summarize a proposed settlement, I consider them inadmissible for any purpose in any enforcement action the State may take in the event that settlement cannot be finalized.

Please note that the proposed Findings and Orders include a provision for a portion of the total civil penalty amount to go toward the funding of supplemental environmentally beneficial project. The project involves diverting a portion of the total civil penalty amount toward performing a pollution prevention study of the facility to assess the feasibility of specific source emission reduction and environmentally sound recycling projects. The pollution prevention studies can lead not only to the reduction of pollution at its source, but also to substantial cost-savings for the facility. Such provisions are being included in Findings and Orders used to resolve violations of Ohio's air pollution control regulations, except for Findings and Orders for some smaller facilities.

Bob Taft, Governor  
Jennette Bradley, Lieutenant Governor

Mr. William D. Hayes, Esq.  
Vorys, Sater, Seymour and Pease LLP  
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Please review the attached documents carefully. If you have any questions concerning the proposed Findings and Orders, or if you would like to arrange a meeting to discuss them, please contact Stephen Feldmann, Ohio EPA Staff Attorney, at (614) 644-3037. If he does not hear from you or your client within fourteen (14) days of the receipt of this letter concerning your client's willingness to accept the Findings and Orders as currently written, or with mutually agreed upon modifications, I will consider alternative enforcement mechanisms including referral of the matter to the Ohio Attorney General's Office for legal action.

A copy of Ohio EPA's guidance document on the administrative enforcement process is enclosed for your information and to facilitate your review of the attached Findings and Orders and your understanding of the Division of Air Pollution Control's administrative enforcement process.

Your prompt attention to this matter will be appreciated.

Sincerely,



Christopher Jones  
Director

xc: Jim Orlemann, DAPC  
Tom Kalman, DAPC  
Stephen Feldmann, Legal Office  
Kay Gilmer/Zachary Hamlin, SEDO  
W. Patrick Huth, Clow

\$5,000  
enclosures

CJ/TK/tk

A guide to the...

# Administrative Enforcement Process

*Within the Division of Air Pollution Control*

## Introduction

This information sheet has been prepared to help you understand the administrative enforcement process within the Agency. With an understanding of the process and adequate preparation, you can facilitate a prompt resolution of this enforcement action. Included are answers to the questions most frequently asked by parties involved in the administrative enforcement process.

## I have been working with the District Office or local air agency inspector to correct the violations. Why is an enforcement action necessary?

The Agency considers the following factors in deciding that an enforcement action is necessary: (1) Ohio EPA needs to obtain civil penalties for your violations; (2) your violations are serious; (3) you have taken too long to address the violations; (4) you need to be on a formal schedule to address the violations; (5) you have been recalcitrant in addressing the violations; and/or (6) you are a chronic violator.

## Why should I try to negotiate an administrative consent order with Ohio EPA?

- Negotiating administrative findings and orders ("Order") with the Ohio EPA avoids expensive and time-consuming litigation.
- Negotiation can be a swift resolution of the State's claims against you for the non-compliance.
- We can quickly identify any obstacle to agreement.
- Negotiation can minimize or prevent any intervention by the USEPA to address the violations.

## Should I continue working with the District Office or local air agency inspector?

Yes, the District Office or local air agency inspector is the best person to work with you to resolve the technical aspects of the violations, and prepare an acceptable control plan and schedule for submission to the Agency. Central Office personnel will also be available to provide assistance.

## What should I do now that I received the proposed administrative consent order?

You should review the enclosed Order and the summary of the penalty calculation. If you accept the enclosed Order as written, sign the Order and send it within two weeks to the staff attorney referenced in the Director's letter. If you cannot accept the Order as written, the Agency would like to meet with you to discuss your concerns. Please contact the designated staff attorney at (614) 644-3037 to arrange a meeting.

## If I want to have a meeting, what should I do to prepare for it?

Generally, the most productive meetings occur when both parties come prepared to discuss all issues. The Order and correspondence from the District Office or local air agency inspector contain the Agency's position. Since you were not willing to agree to the Order as written, we need to know whether you: (1) disagree with the facts outlined in the Order; (2) are not able or willing to comply with the Order; or (3) have information you feel may mitigate the civil penalty settlement amount. Send the staff attorney a written summary of your issues within two weeks from the date of the Director's letter. Additionally, if you believe you are financially unable to pay the penalty, contact the staff attorney for a list of information we need to evaluate your ability to pay.

### **What will happen at the meeting?**

During the meeting, we will respond to any information you have provided. We are willing to work with you to arrive at mutually agreed upon modifications to the Order. Except in the most complex cases, our goal is to complete all negotiations at the meeting. If we cannot agree at the meeting and we feel we are making adequate progress, we will hold our offer of settlement open. Thereafter, if resolution of the negotiations is not achieved within the time frame agreed to by the parties at the settlement meeting or if we feel we are not making adequate progress, the offer of settlement may be withdrawn, and we may consider other enforcement alternatives, including a referral to the Office of the Attorney General.

### **Why do I have to pay a civil penalty?**

A civil penalty is necessary to deter future violations and to remove any economic advantage you may have realized from not complying with Ohio's regulations. Instead of a full cash payment, the Agency may be willing to accept a supplemental environmentally beneficial project ("SEP") that meets certain guidelines.

### **How did the DAPC arrive at the civil penalty settlement amount?**

Ohio EPA relied on U.S. EPA's Air Civil Penalty Policy to calculate the penalty. The DAPC uses this Policy to ensure that we calculate penalties fairly and consistently and that the penalty is appropriate for the gravity of the violations. Enclosed is a summary of the DAPC's civil penalty settlement calculation. If you want a copy of the U.S. EPA's Air Civil Penalty Policy, contact the designated staff attorney at (614) 644-3037.

### **Who from Ohio EPA will be at the meeting?**

Everyone necessary to resolve the matter will be at the meeting or available during the meeting to provide settlement authority. This includes the staff attorney, the District Office or local air agency inspector, and Central Office technical personnel.

### **Who should I bring to the meeting?**

Similarly, you should bring anyone familiar with the issues as well as anyone who has the authority to settle this matter. You are welcome to be represented at this meeting by your attorney and your consultant.

### **News releases**

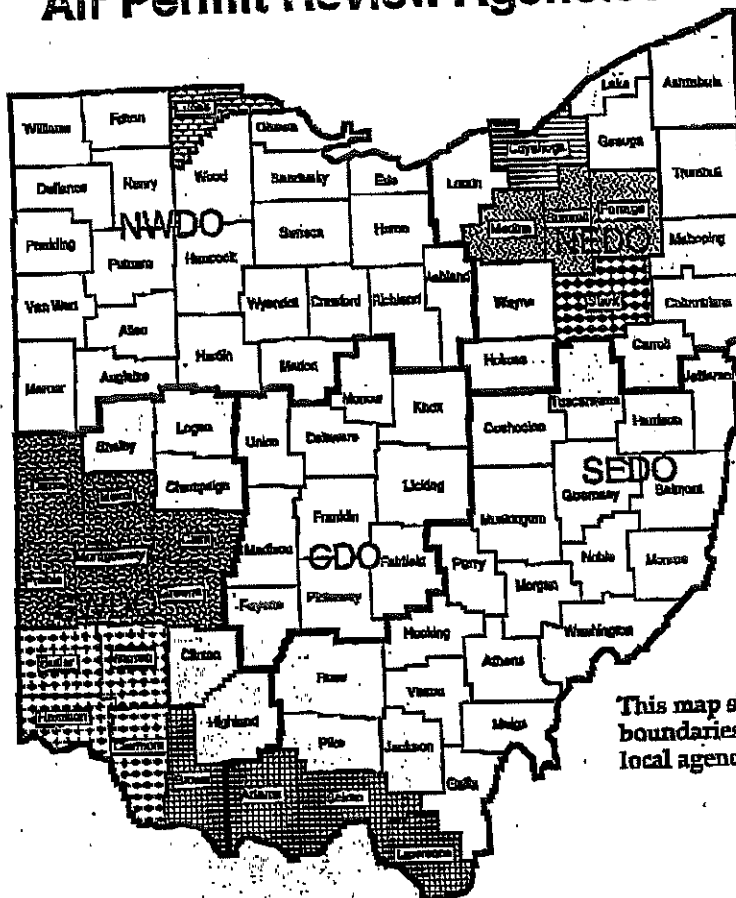
Please be aware that Ohio EPA may issue a news release to local media to inform the community about the settlement of this case, after all parties have signed it. As a public Agency whose primary mission is to promote compliance with environmental laws, we believe it is important to inform citizens about these types of actions. On average, we issue five or six enforcement-related news releases each month. You can read them at <http://www.epa.state.oh.us/pic/current.html>. If we prepare a news release, you will receive a courtesy copy 24 hours before it is released to the media. Although the Ohio EPA's news release represents our position, and it is not appropriate to negotiate the language in the news release with you, we do want to make sure the release is accurate. The one-day preview will be your opportunity to make the Public Interest Center aware of any factual errors you believe need to be corrected, and to prepare any statements you may wish to make to the media on your company's behalf.

### **District Office and local air agency addresses and phone numbers**

See the following pages.

# Air Permit Review Agencies

Division of Air Pollution Control  
Ohio EPA, Central Office  
(614) 644-2270



This map shows jurisdictional boundaries. Shaded areas represent local agencies within Ohio EPA districts.

## Local Air Pollution Control Agencies



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**Lynn Malcolm, Administrator**  
Akron Regional Air Quality  
Management District  
146 South High St., Room 904  
Akron, Ohio 44308  
(330) 375-2480 FAX#(330) 375-2402  
e-mail: lynn\_malcolm@ohio.epa.state.oh.us



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**Dan Aleman, Administrator**  
Air Pollution Control Division  
Canton City Health Dept.  
420 Market Ave. North  
Canton, Ohio 44702-1544  
(330) 489-3385 FAX#(330) 489-3395  
e-mail: alemanda@laa.cl.canton.oh.us



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**Cory Chadwick, Director**  
Dept. of Environmental Services  
Air Quality Programs  
250 William Howard Taft Road  
Cincinnati, Ohio 45219-2660  
(513) 846-7777 FAX#(513) 846-7778  
e-mail: cory.chadwick@does.hamilton-co.org



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**Michael Krzywicki, Project Coordinator**  
Dept. of Public Health & Welfare  
Division of the Environment  
1925 St. Clair Ave.  
Cleveland, Ohio 44114  
(216) 684-2924 FAX#(216) 684-4879  
e-mail: michael\_krzywicki@ohio.epa.state.oh.us



08

**John Paul, Director**  
Regional Air Pollution Control Agency  
Montgomery County Health Dept.  
117 South Main St.  
Dayton, Ohio 45422-1280  
(937) 225-4435 FAX#(937) 225-3486  
e-mail: paulja@rapca.org



07

**Philip H. Thompson, Director**  
Air Pollution Unit  
Portsmouth City Health Dept.  
605 Washington Street, Third Floor  
Portsmouth, Ohio 45662  
(740) 353-5156 FAX#(740) 353-9698  
e-mail: philip\_thompson@ohio.epa.state.oh.us



04

**Karen Granata, Administrator**  
City of Toledo  
Division of Environmental Services  
348 South Erie Street  
Toledo, Ohio 43602  
(419) 935-3015 FAX#(419) 936-3959  
e-mail: karen\_granata@ohio.epa.state.oh.us

## OhioEPA

### District Offices

CDO

01

**Isaac Robinson, APC Supervisor**  
Central District Office  
2232 Alum Creek Drive  
Columbus, Ohio 43207-3417  
(614) 728-3775 FAX#(614) 728-3898  
e-mail: isaac.robinson@epa.state.oh.us

SEDO

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**Kay Gliner, APC Supervisor**  
Southeast District Office  
2195 Front St.  
Logan, Ohio 43138  
(740) 385-8501 FAX#(740) 385-6490  
e-mail: kay.gliner@epa.state.oh.us

NEDO

02

**Dennis Bush, APC Supervisor**  
Northeast District Office  
2110 E. Aurora Rd.  
Twinsburg, Ohio 44097  
(330) 425-8171 FAX#(330) 487-0769  
e-mail: dennis.bush@epa.state.oh.us

NWDO

03

**Don Waltarmeyer, APC**  
Northwest District Office  
347 North Dunbridge Rd.  
Bowling Green, Ohio 43402  
(419) 932-8481 FAX#(419) 352-8488  
e-mail: don.waltarmeyer@epa.state.oh.us

SWDO

05

**Phil Hinrichs, APC Supervisor**  
Southwest District Office  
401 E. Fifth St.  
Dayton, Ohio 45402-2911  
(937) 285-6357 FAX#(937) 285-6249  
e-mail: phil.hinrichs@epa.state.oh.us

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Clow Water Systems Company  
2266 South Sixth Street  
P. O. Box 6001  
Coshocton, Ohio 43812

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:  
:  
:

Director's Final Findings  
and Orders

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Clow Water Systems Company ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 3704.03 and 3745.01.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondent and successors in interest liable under Ohio law. No change in ownership of the Respondent or of the facility (as hereinafter identified) shall in any way alter Respondent's obligations under these Orders.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapter 3704 and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent is a division of McWane, Inc. of Birmingham, Alabama. The Respondent owns and operates a ductile iron water pipe production facility that is located at 2266 South Sixth Street, Coshocton, Ohio. The facility employs an 85 tons per hour grey iron cupola furnace ("emissions unit P901"), which was initially installed prior to 1972, for the production of hot metal to form ductile iron water pipe. Emissions unit P901 is equipped with an afterburner for the combustion of carbon monoxide emissions from the furnace, and with a venturi scrubber followed by a ring-jet scrubber, which was installed in 2002, for the control of particulate emissions from the furnace. The facility is identified by

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Ohio EPA as facility identification number 0616010006.

2. Emissions unit P901 is an "air contaminant source" as defined by Ohio Administrative Code ("OAC") Rules 3745-31-01(G) and 3745-15-01(C) and (W). Respondent's facility is a "major stationary source" as defined in OAC Rule 3745-31-01(WW).

3. Pursuant to OAC Rule 3745-31-02(A), no person shall install a new source of air pollutants, including a "major modification" of an existing source as defined in OAC Rule 3745-31-01(VV), without first obtaining a permit to install ("PTI") from the Director of Ohio EPA, unless otherwise specified by law or rule.

4. Pursuant to OAC Rule 3745-77-04(D), sources required to have a preconstruction permit under Part C or D of Title I of the Clean Air Act, as amended in 1990, shall submit a complete Title V permit application within 12 months after commencing operation, provided that where an existing Title V permit would prohibit construction or operation of such new or modified source, a Title V permit revision must be obtained before operation of such new or modified source, unless as otherwise specified by law or rule.

5. Pursuant to OAC Rule 3745-21-08(D), as effective on February 15, 1972, no person shall, in part, emit carbon monoxide gases generated during the operation of a grey iron cupola furnace, which was installed or modified on or after February 15, 1972, unless they are burned at 1,300 degrees Fahrenheit ("°F") for 0.3 second or greater in a direct-flame afterburner or equivalent device equipped with an indicating pyrometer which is positioned in the working area at the operator's eye level.

6. Pursuant to OAC Rule 3745-31-13(C), any major air stationary source constructed or modified in an area designated as an attainment area must meet the Prevention of Significant Deterioration ("PSD") program requirements contained in OAC Rules 3745-31-10 through 3745-31-20.

7. Pursuant to ORC § 3704.05(C), (G) and (J)(2), no person shall violate any term or condition of a permit issued by the Director, any order, rule or determination of the Director, and any filing requirement of the Title V permit program, respectively.

8. In 1989, Respondent modified emissions unit P901 by installing new hot blast air equipment, which resulted in a major modification of the facility. This modification to emissions unit P901 caused OAC Rule 3745-21-08(D) to become applicable to this emissions unit.

9. In 1998, Respondent modified emissions unit P901 by replacing the 102-inch lined lower shell of the cupola furnace with a 108-inch unlined lower shell, which resulted in a major modification of the facility.

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10. On June 27, 1996, Respondent submitted its initial Title V permit application to Ohio EPA for its facility. Revised Title V permit applications were submitted to Ohio EPA by Respondent on May 10, 1998, September 8, 1998, and February 19, 1999.

11. On June 8, 2000, Respondent was issued a Title V permit by Ohio EPA for its Coshocton facility, pursuant to the requirements of OAC Chapter 3745-77. The Title V permit contains operational restrictions to maintain the pressure drop across the venturi scrubber within a range of 35 to 60 inches of water column while emissions unit P901 is in operation and to burn the gases from emissions unit P901 at a temperature of at least 1300 °F in a direct-flame afterburner or equivalent device designed for a minimum of 0.3 second of residence time. Also, the Title V permit specifies continuous monitoring, daily recordkeeping, and quarterly deviation reporting requirements for the above operating restrictions.

12. On October 25, 2000, Respondent submitted its quarterly deviation report for the third quarter of calendar year 2000. The report identified deviations from operating restrictions as summarized in the attached Table I of these Orders. These deviations from the 1300 °F afterburner temperature and venture scrubber pressure drop restrictions and the requirement to continuously monitor the scrubber pressure drop constitute violations of OAC Rule 3745-21-08(D) and ORC § 3704.05 (C), (G) and (J)(2).

13. On November 30, 2000, Ohio EPA, Southeast District Office ("SEDO") sent correspondence to Respondent acknowledging the inability of Respondent to maintain a minimum 1300 °F afterburner temperature that was first identified in a November 14, 2000 letter and then again in a November 27, 2000 letter from Respondent. Respondent reported in the letters that several experiments were being conducted to try and alleviate the problem, including the addition of supplemental natural gas combustion to increase afterburner temperatures and the addition of compressed air at the height of the charge doorsill; however, Respondent was not able to maintain the minimum 1300 °F afterburner temperature. The November 30, 2000 correspondence from SEDO also requested additional information about emissions unit P901 so that SEDO could determine if OAC Rule 3745-21-08(D) was applicable.

14. On December 4, 2000, Respondent provided updated information to SEDO in reference to experiments occurring to alleviate emissions unit P901's inability to maintain a minimum 1300 °F afterburner temperature. Respondent remained unable to maintain a minimum 1300 °F afterburner temperature.

15. On December 19, 2000, Respondent sent correspondence in reply to SEDO's November 30, 2000 letter. Respondent requested further clarification on why SEDO was requesting additional information about emissions unit P901. On January 5, 2001, a telephone conversation occurred between SEDO staff and Respondent, where Respondent informed SEDO it was continuing to work on emissions unit P901's inability to maintain a minimum 1300 °F afterburner temperature. The November 30, 2000 letter from SEDO was also discussed, during which SEDO clarified the request for additional



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information. On January 11, 2001, SEDO sent correspondence to Respondent providing detailed clarification on why additional information was requested regarding emissions unit P901. The letter again requested that Respondent submit information to SEDO so that it could determine if violations had occurred.

16. The January 11, 2001 correspondence from SEDO also demonstrated that Respondent had provided information in its February 19, 1999 Title V permit application and in more recent correspondence to SEDO that modifications to emissions unit P901 may have occurred in the past, which may have triggered additional requirements.

17. On January 26, 2001, Respondent submitted its quarterly deviation report for the fourth quarter of calendar year 2000. The report identified deviations from operating restrictions as summarized in the attached Table 1 of these Orders. These deviations from the 1300 °F afterburner temperature restriction and the requirement to continuously monitor the scrubber pressure drop constituted violations of OAC Rule 3745-21-08(D) and ORC § 3704.05(C), (G) and (J)(2).

18. On January 30, 2001, Respondent sent correspondence to SEDO providing the information requested in SEDO's November 30, 2000 and January 11, 2001 letters.

19. On February 23, 2001, a telephone conversation occurred between SEDO staff and Respondent, during which Respondent informed SEDO it was continuing to work on emissions unit P901's inability to maintain a minimum 1300 °F afterburner temperature. Also discussed was whether modifications that were reported by Respondent had resulted in increased emissions. The Respondent informed SEDO that it was reviewing documents to make that determination.

20. In a letter dated March 8, 2001, Respondent indicated that the afterburner temperature problem was likely due to incomplete mixing of gases and ambient air, and that it would have an operational fix to the problem by August 2001. The problem was a sensor/recorder for pressure drop and was resolved.

21. On April 30, 2001, Respondent submitted its quarterly deviation report for the first quarter of calendar year 2001. The report identified deviations from operating restrictions as summarized in the attached Table 1 of these Orders. These deviations from the 1300 °F afterburner temperature and venture scrubber pressure drop restrictions and the requirement to continuously monitor the scrubber pressure drop constitute violations of OAC Rule 3745-21-08(D) and ORC § 3704.05 (C), (G) and (J)(2).

22. On July 23, 2001, Respondent submitted its quarterly deviation report for the second quarter of calendar year 2001. The report identified deviations from operating restrictions as summarized in the attached Table 1 of these Orders. These deviations from the 1300 °F afterburner temperature constitute violations of OAC Rule 3745-21-08(D) and ORC § 3704.05 (C), (G) and (J)(2).

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23. On August 8, 2001, a meeting was held between SEDO, Respondent, and Vorys, Sater, Seymour and Pease (Respondent's legal counsel) to discuss Prevention of Significant Deterioration permitting requirements. On August 17, 2001, Vorys, Sater, Seymour and Pease, on behalf of Respondent, sent correspondence to SEDO providing a summary of the meeting held on August 8, 2001 between the parties. The letter discussed the Respondent's inability to maintain a minimum 1300 °F afterburner temperature and the 1989 and 1998 modifications to emissions unit P901 that triggered PSD by causing the potential emissions to exceed the significance thresholds. It was also stated that Respondent planned to submit a complete PSD PTI application no later than the first week of December 2001 to address these modifications.

24. On October 19, 2001, Respondent submitted its quarterly deviation report for the third quarter of calendar year 2001. The report identified deviations from operating restrictions as summarized in the attached Table I of these Orders. These deviations from the 1300 °F afterburner temperature and scrubber pressure drop restrictions and the requirement to continuously monitor the scrubber pressure drop constitute violations of OAC Rule 3745-21-08(D) and ORC § 3704.05 (C), (G) and (J)(2).

25. On November 13, 2001, a warning letter was sent by SEDO to Respondent regarding its failure to submit PTIs for prior modifications. The failure to obtain PSD PTIs for these modifications were violations of OAC Rule 3745-31-02(A) and ORC § 3704.05(G). It was stated that SEDO expected the PSD PTI application to be submitted no later than the first week of December 2001.

26. On November 19, 2001, a telephone conversation occurred between SEDO staff and Respondent. Respondent stated the November 13, 2001 letter from SEDO was received and that the application would be ready for submittal by the second week in February 2002.

27. On January 8, 2002, Respondent sent correspondence to SEDO stating that its contractor, RMT, would have its submittal ready sometime during the second week of February 2002.

28. On January 22, 2002, Respondent submitted its quarterly deviation report for the fourth quarter of calendar year 2001. The report identified deviations from operating restrictions as summarized in the attached Table I of these Orders. These deviations from the 1300 °F afterburner temperature and scrubber pressure drop restrictions constitute violations of OAC Rule 3745-21-08(D) and ORC § 3704.05 (C), (G) and (J)(2).

29. On April 11, 2002, an Ohio EPA Director's warning letter was issued to Respondent outlining the violations of OAC Rules 3745-31-02(A) and 3745-21-08(D). Additionally, Respondent was informed that it was not in compliance with federal PSD regulations in 40 CFR Part 52.21, for years 1989 and 1998, and OAC Rule 3745-31-10 through 20 for 1998. This was based on the following analysis in terms of tons per year ("TPY"):

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Pollutant	Threshold Level (TPY) for Modifications Under PSD Rules	Net Facility Emissions Increase for 1989 Modification (TPY)	Net Facility Emissions Increase for 1998 Modification (TPY)
Particulate Matter	25	32.27	69.08
Volatile Organic Compounds	40	178.27	368.69

The 1998 non-compliance is a violation of OAC Rule 3745-31-13(C) and ORC § 3704.05(G). The Ohio EPA Director's warning letter requested the following be submitted within 14 days of the date of receipt (i.e., April 15, 2002): a PSD PTI application; a history of actual emissions and federally enforceable potential emissions, along with all supporting calculations, for the years 1987 to present; and an expeditious plan and schedule for correcting emissions unit P901's inability to maintain a minimum 1300 °F afterburner temperature. The information was not received by April 29, 2002. Respondent notified SEDO on May 2, 2002 that they would not be able to meet the deadline and requested an extension until May 10, 2002.

30. On April 26, 2002, Respondent submitted its quarterly deviation report for the first quarter of calendar year 2002. The report identified deviations from operating restrictions as summarized in the attached Table I of these Orders. These deviations from the 1300 °F afterburner temperature restriction and the requirement to continuously monitor the afterburner temperature constitute violations of OAC Rule 3745-21-08(D) and ORC § 3704.05 (C), (G) and (J)(2).

31. A response to the Ohio EPA Director's warning letter was received from Respondent on May 16, 2002. A history of emissions unit P901's inability to maintain a minimum 1300 °F afterburner temperature was detailed along with an analysis of the reduced frequency for deviations. However, Respondent remained unable to maintain the minimum 1300 °F afterburner temperature and provided no plan or schedule for correcting the violations as requested in the letter. A PSD PTI application was included, but the response did not include the requested history of actual emissions and federally enforceable potential emissions, along with all supporting calculations, for the years 1987 to present.

32. On May 30, 2002, SEDO returned the PSD PTI application to Respondent. The preliminary completeness review found the application to be incomplete. SEDO provided information to Respondent on what would be required and requested the application be resubmitted.

33. On June 20, 2002, SEDO sent a reply to Respondent regarding its May 16, 2002 response letter. The letter identified the requests made in the Ohio EPA Director's warning letter and the necessary information Respondent would need to submit.

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Respondent was requested to submit a revised PSD PTI application, all actual and potential emission calculations for the years 1987 to the present, and monitoring records that demonstrate that emissions unit P901 was in compliance with the afterburner temperature restriction.

34. On June 24, 2002, a conference call was conducted between a SEDO representative, an Ohio EPA Central Office ("CO") representative, Respondent, and a RMT representative. The June 20, 2002 SEDO letter was discussed. Respondent requested that, due to time constraints, in lieu of the history of actual emissions and federally enforceable potential emissions, along with all supporting calculations, for the years 1987 to present, a summary of the years 1998 and 1998 along with a modification investigation be submitted. Also discussed was the need for a compliance plan and schedule regarding emissions unit P901. Respondent agreed to submit the information.

35. On July 31, 2002, SEDO received a response from Respondent. It included a revised PSD PTI application and a response to emissions unit P901's inability to maintain a minimum 1300 °F afterburner temperature. A compliance plan and schedule was again not submitted other than a statement that the emissions unit should be in compliance by the month's end. Based on previous discussions with Respondent, SEDO believed a plan may be submitted with the next quarterly deviation report. Also included was a response to the agreed upon summary of potential and actual emissions for the years 1989 and 1998 along with a modification investigation. There was confusion as to what calculations were to be submitted with the permit application and those to be submitted to CO in response to the Ohio EPA Director's warning letter. This was eventually clarified and the information was received on August 27, 2002 by CO.

36. On August 21, 2002, Respondent submitted a letter to SEDO regarding the Ohio EPA Director's letter of April 11, 2002. A PSD PTI application for emissions unit P901 was enclosed with the letter. The letter indicated that Respondent should have undergone PSD review concerning the changes to emissions unit P901 that occurred in 1989 and 1998, and that its BACT review was conducted in terms of 2001 to ensure all available control options were considered. Furthermore, Respondent stated that it believed that all issues with the afterburner have been corrected since the replacement of the fan shrouds on April 14, 2002 to reduce leakage and stabilize temperatures. Respondent stated that temperature deviations have decreased from 2.7 percent of operating time in the third quarter of 2000 to 0.377 percent of operating time in the fourth quarter of 2001.

37. On August 23, 2002, SEDO sent correspondence to Respondent Clow regarding review of the second quarter deviation report. SEDO informed Respondent Clow that the deviation report did not include a compliance plan and schedule for emissions unit P901's inability to maintain a minimum 1300°F afterburner temperature. A response was requested within 14 days.

38. On August 26, 2002, Respondent Clow submitted PSD PTI application 06-06986 to SEDO.

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39. On September 4, 2002, Respondent Clow submitted its quarterly deviation report for the second quarter of calendar year 2002. The report identified deviations from operating restrictions as summarized in the attached Table I of these Orders. These deviations from the 1300 °F afterburner temperature restriction and the requirement to continuously monitor the scrubber pressure drop constitute violations of OAC Rule 3745-21-08(D) and ORC § 3704.05 (C), (G) and (J)(2).

40. On October 25, 2002, Respondent submitted its quarterly deviation report for the third quarter of calendar year 2002. The report identified deviations from operating restrictions as summarized in the attached Table I of these Orders. These deviations from the 1300 °F afterburner temperature and scrubber pressure drop restrictions and the requirement to continuously monitor the afterburner temperature constitute violations of OAC Rule 3745-21-08(D) and ORC § 3704.05 (C), (G) and (J)(2).

41. On January 23, 2003, Respondent submitted its quarterly deviation report for the fourth quarter of calendar year 2002. The report identified deviations from operating restrictions as summarized in the attached Table I of these Orders. These deviations from the 1300 °F afterburner temperature and venturi scrubber pressure drop restrictions and the requirement to continuously monitor the afterburner temperature constitute violations of OAC Rule 3745-21-08(D) and ORC § 3704.05 (C), (G) and (J)(2).

42. In an e-mail dated February 3, 2003 to Respondent's legal counsel, Ohio EPA requested the following information:

- a. the past actual emissions and future potential emissions for each year from 1987 to the present for all pollutants for emissions unit P901;
- b. the past actual emissions and future actual emissions from 1987 to the present for all emissions units both upstream and downstream from emissions unit P901; and
- c. a plan and schedule for addressing the afterburner temperature deviations of emissions unit P901.

43. In a letter dated February 18, 2003, counsel for Respondent submitted a letter to the Ohio EPA Legal Office encouraging Ohio EPA to process the May 2002 PSD PTI application submitted by Respondent or indicate what additional information is needed. Also, counsel mentioned that actual and potential data for 1987 to 2003 is not needed for all sources at the facility when Best Available Control Technology ("BACT") is being demonstrated in present day terms. Furthermore, counsel questioned the need to focus on any other sources other than emissions unit P901.

44. On April 24, 2003, Respondent submitted its quarterly deviation report for the first quarter of calendar year 2003. The report identified deviations from operating restrictions as summarized in the attached Table I of these Orders. These deviations from

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the 1300 °F afterburner temperature and scrubber pressure drop restrictions and the requirement to continuously monitor the afterburner temperature and venturi scrubber pressure drop constitute violations of OAC Rule 3745-21-08(D) and ORC § 3704.05 (C), (G) and (J)(2).

45. On July 24, 2003, Respondent submitted its quarterly deviation report for the second quarter of calendar year 2003. The report identified deviations from operating restrictions as summarized in the attached Table I of these Orders. These deviations from the 1300 °F afterburner temperature and venturi scrubber pressure drop restrictions and the requirement to continuously monitor the afterburner temperature constitute violations of OAC Rule 3745-21-08(D) and ORC § 3704.05 (C), (G) and (J)(2).

46. On October 21, 2003, Respondent submitted its quarterly deviation report for the third quarter of calendar year 2003. The report identified deviations from operating restrictions as summarized in the attached Table I of these Orders. These deviations from the 1300 °F afterburner temperature and venturi scrubber pressure drop restrictions constitute violations of OAC Rule 3745-21-08(D) and ORC § 3704.05 (C), (G) and (J)(2).

47. On November 14, 2003, Respondent submitted a revised PSD PTI application to Ohio EPA for emissions unit P901, which replaced PSD PTI application 06-06986. On November 21, 2003, the revised PSD PTI application was returned to Respondent by Ohio EPA per Respondent's e-mail request dated November 19, 2003.

48. On January 28, 2004, Respondent submitted its quarterly deviation report for the fourth quarter of calendar year 2003. The report identified deviations from operating restrictions as summarized in the attached Table I of these Orders. These deviations from the 1300 °F afterburner temperature and scrubber pressure drop restrictions and the requirement to continuously monitor the afterburner temperature and venturi scrubber pressure drop constitute violations of OAC Rule 3745-21-08(D) and ORC § 3704.05 (C), (G) and (J)(2).

49. In a letter dated February 9, 2004, Ohio EPA returned PSD PTI application 06-06986 for emissions unit P901 to Respondent since it was incomplete.

50. In a letter dated March 4, 2004, SEDO notified Respondent of its preliminary review of the PSD PTI application received on February 12, 2004 and requested Respondent to, within seven days, submit the noted missing or incomplete information, or the application would be deemed incomplete and be returned.

51. On April 7, 2004, Respondent submitted a reply to SEDO's letter of March 4, 2004 and provided information.

52. On April 24, 2004, Respondent submitted its quarterly deviation report for the first quarter of calendar year 2004. The report identified deviations from operating restrictions as summarized in the attached Table I of these Orders. These deviations from the 1300 °F afterburner temperature and venturi scrubber pressure drop restrictions and

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the requirement to continuously monitor the afterburner temperature constitute violations of OAC Rule 3745-21-08(D) and ORC § 3704.05 (C), (G) and (J)(2).

53. In a letter to Respondent dated May 24, 2004, SEDO requested additional information in reply to Respondent's letter of April 7, 2004.

54. On July 12, 2004, Respondent submitted its quarterly deviation report for the second quarter of calendar year 2004. The report identified deviations from operating restrictions as summarized in the attached Table I of these Orders. These deviations from the 1300 °F afterburner temperature and venturi scrubber pressure drop restrictions and the requirement to continuously monitor the afterburner temperature constitute violations of OAC Rule 3745-21-08(D) and ORC § 3704.05 (C), (G) and (J)(2).

55. On September 14, 2004, Respondent submitted the remaining information to make its PSD PTI application complete.

56. It is Respondent's position that it has minimized or eliminated the deviations of the operating restrictions and monitoring requirements of its Title V permit.

57. The Director has given consideration to, and based his determination on evidence relating to the technical feasibility and economic reasonableness of complying with the following Orders and their benefits to the people of the State to be derived from such compliance.

## **V. ORDERS**

The Director hereby issues the following Orders:

1. Pursuant to ORC § 3704.06, Respondent is assessed a civil penalty in the amount of two hundred forty-five thousand dollars (\$245,000) in settlement of Ohio EPA's claims for civil penalties. Within fourteen (14) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of two hundred thirty-five thousand dollars (\$235,000) of the total penalty amount. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" for two hundred thirty-five thousand dollars (\$235,000). The official check shall be submitted to Brenda Case, or her successor, at Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying the Respondent and the facility. A copy of the check shall be sent to James A. Orlemann, Assistant Chief, Enforcement Section, or his successor, at the following address:

Division of Air Pollution Control  
Ohio Environmental Protection Agency  
P.O. Box 1049  
Columbus, Ohio 43216-1049

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In lieu of payment to Ohio EPA of the remaining ten thousand dollars (\$10,000) of the total penalty amount, Respondent shall perform the supplemental environmentally beneficial project identified in Order 2. In the event Respondent defaults or otherwise fails to complete the project as specified in Order 2, the \$10,000 shall immediately become due and payable to Ohio EPA. Such payment shall be made by official check made payable to "Treasurer, State of Ohio" and sent to Brenda Case at the above-stated address. A copy of the check shall be sent to James A. Orlemann, Assistant Chief, Compliance and Enforcement, or his successor, at the above-stated address.

2. As outlined below, and with reference to the chapters described in Ohio EPA's 1993 "Ohio Pollution Prevention and Waste Minimization Planning Guidance Manual" (the Manual), Respondent shall conduct a pollution prevention study ("P2 Study") at the facility. The P2 Study is an assessment of selected facility processes to identify and evaluate specific source reduction and environmentally sound recycling opportunities.

- a. Within ninety (90) days after the effective date of these Orders, Respondent shall submit a detailed narrative report to Ohio EPA for review and approval containing the following:
  - i. a list of the members of a cross-functional team for the P2 Study, including the name of a designated team leader;
  - ii. an identification of the processes selected for study and the methods used to select the processes; and
  - iii. a description of the processes being studied, including types and quantities of raw materials used, waste generated (i.e., air emissions, hazardous waste, solid waste, wastewater), and the intermediate or final products.

The above items shall be completed following the guidance provided in Chapters 8 and 9 of the Manual.

- b. Within one hundred eighty (180) days after the effective date of these Orders, Respondent shall submit a detailed narrative report to Ohio EPA for review and approval containing the following:
  - i. an analysis of the process-related factors contributing to waste generation;
  - ii. a description of the specific pollution prevention opportunities identified; and
  - iii. a discussion of the approach used in screening and prioritizing pollution prevention opportunities for future implementation.



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The above items shall be completed following the guidance provided in Chapters 11 and 12 of the Manual.

- c. Within two hundred seventy (270) days after the effective date of these Orders, Respondent shall submit a detailed narrative final report to Ohio EPA for review and approval containing the following:
  - i. an evaluation of the cost considerations and feasibility analysis of the identified pollution prevention opportunities;
  - ii. a discussion of those projects that have been eliminated as well as those that have been implemented, planned for implementation, or under consideration for possible implementation; and
  - iii. a description of the other items bulleted in Table 7 of Chapter 15 of the Manual.

The above items shall be completed following the guidance provided in Chapters 13, 14 and 15 of the Manual.

- d. Within three hundred and thirty (330) days after the effective date of these Orders, Respondent shall submit an approvable detailed narrative final report to Ohio EPA, unless the report submitted to Ohio EPA pursuant to the above paragraph c is approved by Ohio EPA.

Ohio EPA shall provide Respondent with its comments and an indication of approval or disapproval of the reports submitted pursuant to this Order in a timely manner.

3. Within thirty (30) days of the completion and approval by Ohio EPA of the project identified in Order 2, Respondent shall submit documentation to Ohio EPA of the total cost of the P2 Study. If the total cost of the P2 Study is less than \$10,000, Respondent shall submit along with the final report identified in Order 2, and in the manner described in Order 1, an official check to Ohio EPA for the difference in cost between \$10,000 and the total cost of the P2 Study.

## **VI. TERMINATION**

Respondent's obligations under these Orders shall terminate when Respondent certifies in writing and demonstrates to the satisfaction of Ohio EPA that Respondent has performed all obligations under these Orders and the Chief of Ohio EPA's Division of Air Pollution Control acknowledges, in writing, the termination of these Orders. If Ohio EPA does not agree that all obligations have been performed, then Ohio EPA will notify Respondent of the obligations that have not been performed, in which case Respondent shall have an opportunity to address any such deficiencies and seek termination as described above.

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The certification shall contain the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate and complete."

This certification shall be submitted by Respondent to Ohio EPA and shall be signed by a responsible official of Respondent. For purposes of these Orders, a responsible official is the person authorized to sign in OAC Rule 3745-35-02(B)(1) for a corporation or a duly authorized representative of Respondent as that term is defined in the above-referenced rule.

## **VII. OTHER CLAIMS**

Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership or corporation, not a party to these Orders, for any liability arising from, or related to, the operation of Respondent's facility.

## **VIII. OTHER APPLICABLE LAWS**

All actions required to be taken pursuant to these Orders shall be undertaken in accordance with the requirements of all applicable local, state, and federal laws and regulations. These Orders do not waive or compromise the applicability and enforcement of any other statutes or regulations applicable to the Respondent.

## **IX. MODIFICATIONS**

These Orders may be modified by agreement of the parties hereto. Modifications shall be in writing and shall be effective on the date entered in the journal of the Director of Ohio EPA.

## **X. NOTICE**

All documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency  
Southeast District Office  
2195 Front Street  
Logan, Ohio 43138  
Attention: Zach Hamlin, Environmental Specialist

and to:

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Ohio Environmental Protection Agency  
Lazarus Government Center  
Division of Air Pollution Control  
P.O. Box 1049  
Columbus, Ohio 43216-1049  
Attention: Thomas Kalman, Manager, Enforcement Section

or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

### **XI. RESERVATION OF RIGHTS**

Ohio EPA and Respondent each reserve all rights, privileges and causes of action, except as specifically waived in Section XII of these Orders.

### **XII. WAIVER**

In order to resolve disputed claims, without admission of fact, violation, or liability, and in lieu of further enforcement action by Ohio EPA for only the violations specifically cited in these Orders, Respondent consents to the issuance of these Orders and agrees to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for the Respondent's liability for the violations specifically cited herein.

Respondent hereby waives the right to appeal the issuance, terms and conditions, and service of these Orders, and Respondent hereby waives any and all rights Respondent may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and the Respondent agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondent retains the right to intervene and participate in such appeal. In such an event, Respondent shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated, or modified.

### **XIII. EFFECTIVE DATE**

The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

### **XIV. SIGNATORY AUTHORITY**

Each undersigned representative of a party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such party to these Orders.

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**IT IS SO ORDERED AND AGREED:**

Ohio Environmental Protection Agency

\_\_\_\_\_  
Christopher Jones  
Director

\_\_\_\_\_  
Date

**IT IS SO AGREED:**

Clow Water Systems Company

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed or Typed Name

\_\_\_\_\_  
Title

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**TABLE I. SUMMARY OF DEVIATIONS FROM AFTERBURNER TEMPERATURE AND SCRUBBER PRESSURE DROP OPERATING RESTRICTIONS AND TEMPERATURE AND PRESSURE DROP MONITORING REQUIREMENTS BY CALENDAR QUARTER FOR CLOW WATER SYSTEMS COMPANY IN COSHOCTON, OHIO**

Quar ter	Year	No. of Days When Afterburner Temp. was < 1300 °F/ Total Minutes	No. of Days When Pressure Drop was < 35 inches of Water Column/ Total Hours	No. of Days When Pressure Drop Monitor(s) Not in Operation/ Total Hours	No. of Days When Temp. Monitor Not in Operation/ Total Hours
3rd	2000	34 days/1,465 minutes	6 days/72 hours	11 days/82 hours	
4th	2000	37 days/727 minutes		17 days/127 hours	
1st	2001	42 days/828 minutes	1 day/4 hours	1 day/4 hours	
2nd	2001	19 days/196 minutes			
3rd	2001	7 days/145 minutes	3 days/19.5 hours	3 days/33 hours	
4th	2001	9 days/136 minutes	7 days/47 hours		2 days/NK
1st	2002	5 days/179 minutes		3 days/18.5 hours	12 days/NK
2nd	2002	25 days/489 minutes		10 days/34.7 hours	
3rd	2002	3 days/83 minutes	11 days/29.76 hours		3 days/NK
4th	2002	29 days/1,471 minutes	10 days/47.66 hours		3 days/NK
1st	2003	39 days/2,006 minutes	27 days/22.5 hours		4 days/NK
2nd	2003	38 days/1,146 minutes	18 days/28 hours		12 days/NK
3rd	2003	18 days/154 minutes	21 days/39.1 hours		2 days/NK
4th	2003	4 days/556 minutes	15 days/23.5 hours	1 day/NK	3 days/NK
1st	2004	33 days/1,684 minutes	17 days/31 hours		7 days/41.5 hours
2nd	2004	16 days/576 minutes	12 days/15.5 hours		5 days/NK

**AIR CIVIL PENALTY WORK SHEET**  
**Clow Water Systems Company**  
**(for settlement purposes only)**

COMPONENT	SUBTOTAL	TOTAL	COMMENT
A. Benefit Component: (enter from attached computer calculation)		<u>\$0</u>	Any economic benefit from delayed compliance is negligible.
B. Gravity Component:			
1. Actual or possible harm:			
a. Amount above standard	<u>\$0</u>		Not applicable.
b. Toxicity of pollutant:	<u>\$0</u>		Not applicable.
c. Sensitivity of environment:	<u>\$0</u>		Not applicable.
d. Length of time of violation:			
i.	<u>\$15,000</u>		failure to consistently maintain compliance with the minimum afterburner temperature restriction on a total of 358 days (12 months)
ii.	<u>\$12,000</u>		failure to consistently maintain compliance with the minimum venturi scrubber pressure drop restriction on a total of 148 days (5 months)
iii.	<u>\$8,000</u>		failure to consistently maintain compliance with the afterburner temperature monitoring requirement on a total of 53 days (2 months)
iv.	<u>\$5,000</u>		failure to consistently maintain compliance with the venturi scrubber pressure drop monitoring requirement on a total of 41 days (1 month)

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COMPONENT	SUBTOTAL	TOTAL	COMMENT
2. Importance to regulatory scheme:	<u>\$5,000</u>		
a.			failure to consistently maintain compliance with the minimum afterburner temperature restriction
b.	<u>\$5,000</u>		failure to consistently maintain compliance with the minimum venturi scrubber pressure drop restriction
c.	<u>\$5,000</u>		failure to consistently maintain compliance with the afterburner temperature monitoring requirement
d.	<u>\$5,000</u>		failure to consistently maintain compliance with the venturi scrubber pressure drop monitoring requirement
3. Size of violator:	<u>\$35,000</u>		Company net worth is estimated at \$31.1 million, based on 20% of sales of \$155.4 million for 2003 (per Ward's Business Directory).
Total non-PSD gravity component:		<u>\$ 95,000</u>	
4. PSD gravity component:			
a.	<u>\$2,000</u>		construction of modification to emissions unit P901 in 1989 without a PSD PTI (assumes one month for construction @ \$2,000/month)

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COMPONENT	SUBTOTAL	TOTAL	COMMENT
b.	<u>\$68,000</u>		operation of modification to emissions unit P901 in 1989 without a PSD PTI (from first warning letter of 11/13/01 to submittal of complete PSD PTI application on 9/14/04 @ \$2,000/month)
c.	<u>\$2,000</u>		construction of modification to emissions unit P901 in 1998 without a PSD PTI (assumes one month for construction @ \$2,000/month)
d.	<u>\$68,000</u>		operation of modification to emissions unit P901 in 1998 without a PSD PTI (from first warning letter of 11/13/01 to submittal of complete PSD PTI application on 9/14/04 @ \$2,000/month)
Total PSD gravity component:		<u>\$140,000</u>	
Preliminary deterrence amount: (sum of benefit and gravity components)		<u>\$235,000</u>	
C. Flexibility-Adjustment Factors:			
1. Degree of willfulness or negligence: (total gravity component times any augmentation percentage)	<u>\$0</u>		Not applicable.
2. Degree of cooperation: (total gravity component times any mitigation percentage)	<u>\$0</u>		Not applicable.
3. History of noncompliance: (total gravity component times any augmentation percentage)	<u>\$0</u>		Not applicable.
4. Ability to pay: (any mitigation amount)	<u>\$0</u>		Not known.
5. Other unique factors: (total gravity component times any mitigation or augmentation)	<u>\$0</u>		Not applicable.



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COMPONENT	SUBTOTAL	TOTAL	COMMENT
All augmentation (+) and mitigation (-) amounts added: (if negative, cannot exceed total gravity component)		<u>\$0</u>	
D. Administrative Component			
1. Installation of sources without obtaining a Permit to Install	<u>\$10,000</u>		Failure to obtain PTIs for modifications to emissions unit P901 in 1989 and 1998. Penalty factor is \$5,000/emissions unit.
2. Operation of sources without obtaining a Permit to Operate	<u>\$0</u>		Not applicable.
Total Administrative Component		<u>\$10,000</u>	
E. Initial Minimum Settlement Amount: [preliminary deterrence amount + or - sum of flexibility adjustment factors plus administrative component (A + B + C + D)]		<u>\$245,000</u>	